



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 8, 1998

Mr. Frank M. Crull
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-3004

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120288.

The Texas Department of Public Safety (the "department") received a request for "the complete arrest file on Leon Peace," concerning a specified driving while intoxicated arrest. In response to the request, you submit to this office for review the information which you assert is responsive. You seek to withhold the submitted information from public disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

We note at the outset that included among the submitted information, you have provided a report of the results of an intoxilyzer test. Section 724.018 of the Transportation Code provides that "a person who has given a specimen at the request of a peace officer" may obtain on request "full information concerning the analysis of the specimen." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to the law-enforcement exception. *See* Open Records Decision Nos. 613 (1993), 623 (1994). If the requestor here is the attorney for the person who gave the specimen, we believe that you must release the test report to him under section 724.018 of the Transportation Code. However, if the requestor is not representing the person who gave the specimen, then we next consider your claim under section 552.108, the "law enforcement" exception, as for the requested records.

Based on your representation and the records, we understand that you are claiming section 552.108(a)(1). Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. You explain that the investigation into the charge of driving while intoxicated "is still outstanding." Since there

is an active investigation, we agree that you have shown that release of this information would interfere with the prosecution of crime. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see* Open Records Decision No. 216 at 3 (1978) (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests).

However, we note that certain basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. *See* Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, except for basic information normally found on the front page of an offense report, you may withhold the remaining information from disclosure pursuant to section 552.108. You may choose, however, to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 120288

Enclosures: Submitted documents

cc: Mr. Robert Pelton
1908 N. Memorial Way
Houston, Texas 77007-8319
(w/o enclosures)